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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re ANDREW F. et al, Persons Coming
Under the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES
AGENCY,

Plaintiff and Respondent,

v.

KRISTI F.,

Defendant and Appellant.

G041387

(Super. Ct. Nos. DP012214 &
DP012215)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Gary
Vincent, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Niccol Kording, under appointment by the Court of Appeal, for Defendant and Appellant.

Nicholas S. Chrisos, County Counsel, Karen L. Christensen and Julie J. Agin, Deputy County Counsel, for Plaintiff and Respondent.

* * *

Kristi F. appeals for the second time from the termination of parental rights to her two boys, Hunter and Andrew. After reversal and remand for notice error under the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901 et seq.), the juvenile court again found that ICWA did not apply and reinstated the order terminating parental rights. The mother claims the juvenile court erred when it failed to allow the maternal grandmother to come forward with additional information about the children's Indian heritage. She contends the finding that ICWA did not apply must be reversed and the case must be remanded with directions to SSA to determine whether any additional ICWA information exists. We affirm.

FACTS

Hunter F. and Andrew F. were adjudicated dependents of the juvenile court in October 2005. The mother, Kristi F., claimed she had Cherokee and Sioux heritage, and the Orange County Social Services Agency (SSA) sent out notices of the dependency proceedings to those tribes and to the Bureau of Indian Affairs (BIA) pursuant to ICWA. After reunification failed, the court terminated parental rights in December 2007.

The mother appealed, claiming the ICWA notices were defective because they contained incomplete information about her family due to SSA's failure to interview her family members. We agreed and reversed the termination of parental rights, remanding for the limited purpose of "direct[ing] SSA to fulfill its duty to inquire about the mother's Indian heritage and to comply with ICWA notice procedures." (*In re Andrew F.* (June 30, 2008, G039862) slip opn. pp. 3-4.)

On remand, the juvenile court ordered SSA to conduct an ICWA inquiry. The social worker talked to the maternal grandmother, Janelle F., who claimed Sioux and Cherokee heritage through the maternal great-grandfather and the maternal great-great-grandfather. The maternal grandmother could not provide more information and did not give the social worker the name of another relative who could provide more information, but she said “she would call the relatives herself and relay the information to [the social worker].” The social worker called back twice, but as of July 30, 2008, the maternal grandmother provided no additional information.

The social worker also interviewed the mother. She said the maternal great-uncle might have more information, but she did not know his telephone number. The social worker called the maternal grandmother and asked for the maternal great-uncle’s telephone number; she did not know it but said she would try to obtain it. Notices to the Secretary of the Interior, the BIA, and 19 tribes were sent on August 4, 2008. Return receipts and responses from the BIA and the tribes were filed with the juvenile court on August 18 and September 22, 2008.

On October 22, the parties appeared for an ICWA notice hearing. SSA recommended the court find that notice was proper and that ICWA does not apply to this case. All parties agreed except the mother. Her counsel stated, “Maternal grandmother is here and informed me that she will be getting information from a cousin today via e-mail regarding a maternal great great grandfather who was a member of a tribe in Oklahoma. She doesn’t have any further information right now, but she has provided me with that information.” Based on the representation that “the grandmother is going to be getting information from a cousin,” the court concluded no information existed. “I suppose if something does pop up, someone will let somebody know something about it. But at this point in time, I have no factual basis to suggest that [ICWA] hasn’t been complied with.”

The court found ICWA did not apply and reinstated the previous orders terminating parental rights.

DISCUSSION

The mother concedes that SSA fulfilled its inquiry duty under ICWA upon remand. But she claims when the maternal grandmother appeared on the day of the hearing and suggested there might be more information some time in the future, SSA had a new duty to inquire. Under the circumstances here, we disagree.

“ICWA was enacted ‘to promote the stability and security of Indian tribes and families by establishing minimum standards for removal of Indian children from their families and placement of such children “in foster or adoptive homes which will reflect the unique values of Indian culture. . . .” [Citations.]’ (*In re Jeremiah G.* (2009) 172 Cal.App.4th 1514, 1520.) An Indian child is defined by ICWA as “any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe” (25 U.S.C.A. § 1903(4).)

If the juvenile court “knows or has reason to know that an Indian child is involved,” the social worker must “make further inquiry regarding the possible Indian status of the child” and must send notice of the pending dependency proceedings to the identified tribe or to the Bureau of Indian Affairs. (25 U.S.C.A. § 1912(a); Welf. & Inst. Code, § 224.2, subd. (a), § 224.3, subds. (c) & (d).) The juvenile court may have reason to know that the dependency proceedings involve an Indian child if, inter alia, “[a] person having an interest in the child, including the child, an officer of the court, a tribe, an Indian organization, a public or private agency, or a member of the child’s extended family provides information suggesting the child is a member of a tribe or eligible for membership in a tribe or one or more of the child’s biological parents, grandparents, or

great-grandparents are or were a member of a tribe.” (Welf. & Inst. Code, § 224.3, subd. (b)(1).)

It is true that the court and SSA have “an affirmative and continuing duty” to inquire about a dependent child’s Indian heritage whenever there is reason to know that the child may be an Indian child. (§ 224.3, subd. (a).) But this duty is not unlimited. SSA interviewed both the mother and the maternal grandmother. The maternal grandmother did not give SSA additional telephone numbers or addresses for other relatives who might have more information; rather, she represented she would gather the information herself if she could. Based on the information gleaned from these interviews, SSA sent out notices to the BIA and 19 tribes, including two Cherokee tribes in Oklahoma. This is all SSA could reasonably be expected to do. (*In re Levi U.* (2000) 78 Cal.App.4th 191, 198.)

Three months later, the maternal grandmother appeared at the ICWA hearing and claimed she would be receiving more information later that day. After three months of waiting for the maternal grandmother to provide information, the court was entitled to look askance at her assertion. If the mother or her family had access to additional information about tribal heritage, it should have been gathered and reported to SSA in a timely manner. (*In re Levi U.*, *supra*, 78 Cal.App.4th at p. 198.) The maternal grandmother’s eleventh hour representation did not constitute new information and was not sufficient to justify further delay in this case.

Furthermore, the mother has not shown that the juvenile court’s order will result in a miscarriage of justice. (*In re N.E.* (2008) 160 Cal.App.4th 766, 769.) She asks us to remand the case so SSA can conduct a further investigation but makes no representation that new information exists. If the anticipated email yielded new information, it would be a simple task for the mother to let us know. (*In re Rebecca R.* (2006) 143 Cal.App.4th 1426, 1431.) “Parents unable to reunify with their children have

already caused the children serious harm; the rules do not permit them to cause additional unwarranted delay and hardship, without any showing whatsoever that the interests protected by ICWA are implicated in any way.” (*Ibid.*)

DISPOSITION

The judgment is affirmed.

SILLS, P. J.

WE CONCUR:

BEDSWORTH, J.

O’LEARY, J.